

THE CITY OF NEW YORK
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Honorable Michael H. Dolinger
United States Magistrate Judge
United States Courthouse
500 Pearl Street
New York, New York 10007

May 9, 2008

ENDORSED ORDER

The deadline for fact discovery is extended to May 30, 2008. Plaintiff's expert witness disclosure is due by June 19, 2008; defendant's expert witness disclosure is due by July 15, 2008; and expert information is due by August 1, 2008. The joint pretrial order on a dispositive motion is due by August 22, 2008.

Re: Zhao v. City of New York, et al., 07 CV 3636 (LAK) (MHD)

Your Honor:

I represent defendants in the above-referenced matter. On behalf of both parties, I write to advise the Court of recent discovery issues that have arisen and to request an extension of the fact and expert discovery deadlines as a result of these recent developments. For the reasons set forth below, the parties respectfully request that the deadline to complete fact discovery be extended from May 13, 2008, to May 30, 2008. If the Court grants this request, the parties also request that the current deadlines for expert disclosure be extended as well, so that the deadline by which plaintiff is to serve his expert reports is extended to June 19, 2008, the deadline by which defendants must serve their expert reports is extended to July 15, 2008, and that the deadline for the completion of expert discovery be extended to August 1, 2008. Similarly, if the Court grants this request, the parties request that the deadline for the filing of the Joint Pre-Trial Order and/or any dispositive motion be extended to August 22, 2008. In addition, defendants request that their time to serve their supplemental responses to Plaintiff's Fifth Set of Interrogatories and Request for the Production of Documents ("Plaintiff's Fifth Set") and the corresponding Second Set of Requests for Admissions be extended from May 12, 2008, to May 28, 2008. Plaintiff does not consent to defendants' request for an extension of time to serve their responses to Plaintiff's Fifth Set and Second Set for Requests for Admissions.

As set forth above, the parties' request for an extension of time to complete fact discovery is necessitated by a recent development. During the second deposition of defendant Detective Billy Milan, on April 16, 2008, Detective Milan testified that he recalled that at one point the investigative file in this matter contained a number of still photographs that were derived from the surveillance videotapes that were disclosed during discovery to plaintiff. However, while the investigative file in this matter was produced to plaintiff, the still photographs were not in the file and thus were not produced. After Detective Milan testified about the photographs, defendants searched and located the photographs and on May 6, 2008,

produced photocopies of the still photographs to plaintiff's counsel. On May 7, 2008, plaintiff's counsel inspected the original photographs and on May 8, 2008, defendants provided scanned copies of the original photographs to plaintiff's counsel.

As a result of their review of the photographs, and the notes written on the back of some of the still photographs, plaintiff's counsel sought to depose certain witnesses who had previously been deposed (Detectives Milan, Conlon, Ng, Romano and Rivera) to question them about the photographs. In addition, plaintiff also seeks to depose a new witness, retired Police Officer Frank SanTero, who appears to have been involved in creating certain of the still photographs and who was, upon information and belief, assigned to a unit other than the Technical Assistance Response Unit. Defendants agreed to produce Detectives Milan, Conlon, Ng, Romano and Rivera for an additional deposition about the photographs, and all of the depositions except for that of retired Detective Ng are scheduled for next week.¹ Similarly, defendants agreed to produce retired Officer SanTero once we have contacted him and have ascertained his availability. In addition, after conferring with plaintiff's counsel, defendants have agreed to pay certain costs associated with the depositions of Milan, Conlon, Ng, Romano and Rivera.

In addition to their request for the above depositions, on this date plaintiff's counsel requested any documents associated with the creation of the still photographs. Defendants are searching for responsive documents and will produce them promptly upon receipt.

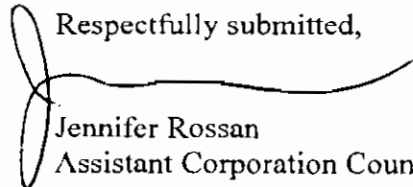
In light of the above, the parties request that the deadline to complete fact discovery be extended to June 10, 2008, to accommodate the additional depositions and document production. This extension will also allow the parties to conduct any additional discovery, if necessary, that results from the aforementioned depositions and any document production.

With respect to defendants' request for an extension of time to provide supplemental responses to Plaintiff's Fifth Set and Second Set of Requests for Admissions, (annexed hereto as Exhibit A), because both revolve solely around issues surrounding the "15 minute enhanced tape," and because any evidence adduced at certain of the additional depositions and/or in response to plaintiff's recent document request may bear directly on defendants' supplemental responses, defendants request an extension of time to serve their supplemental responses. Plaintiff cannot demonstrate any prejudice if defendants' time to provide supplemental responses is extended, especially if this Court grants the parties' request for an extension of the expert discovery deadline. Further, in two recent requests for an extension of time to complete discovery, plaintiff's counsel consented to defendants' request that they be permitted to serve supplemental responses two days before the expiration of the fact discovery deadline.

¹ Upon information and belief, retired Detective Ng is currently out of the country. Defendants continue their efforts to contact him and will produce him promptly upon his return. However, at this juncture defendants do not know when he will be available and thus cannot provide a date for his deposition. Because former Police Officer Frank SanTero retired and because defendants must locate and contact him, at this juncture defendants do not know when he will be available and thus cannot provide a date for his deposition.

Therefore, for the reasons set forth above, the parties' request that the discovery scheduled be adjusted as set forth in paragraph one, above. Further, if the Court grants the parties' request for an extension of time to complete discovery, defendants request that their time to serve supplemental responses to Plaintiff's Fifth Set and Second Set of Requests for Admission be extended until May 28, 2008.

Respectfully submitted,



Jennifer Rossan
Assistant Corporation Counsel

cc: Erie Siegle, Esq. (via fax)